



Judicial Council of California

Administrative Office of the Courts

Trial Court Financial Policies and Procedures

Procedure No.
Page

FIN 7.02
1 of 19

MEMORANDUMS OF UNDERSTANDING

POLICY NUMBER: AOC FIN 7.02

Original Release

April 2001

Originator:

Administrative Office of the Courts

Effective Date:

July 1, 2006

Revision Date:

November 22, 2005



Memorandums of Understanding

1.0 Table of Contents

- 1.0 Table of Contents
- 2.0 Purpose
- 3.0 Policy Statement
- 4.0 Application
- 5.0 Definitions
- 6.0 Text
 - 6.1 MOU Elements
 - 6.2 MOU Negotiation
 - 6.3 Risk Evaluation
 - 6.4 MOU Execution
 - 6.5 MOUs for County-Provided Services
- 7.0 Associated Documents

2.0 Purpose

The purpose of this policy is to establish uniform guidelines for the trial court to follow in preparing, reviewing, negotiating, and entering into memorandums of understanding (MOUs) between itself and other government entities.

3.0 Policy Statement

Unless a contract or interagency agreement is required, the trial court shall execute memorandums of understanding when entering into specific agreements with other governmental entities. It is the responsibility of every court employee authorized to commit trial court resources to apply contract principles and procedures that protect the interests of the court in entering into MOUs.

Trial Court Financial Policies and Procedures	Memorandums of Understanding	Procedure No. FIN 7.02 Page: 3 of 19
--	-------------------------------------	--

4.0 Application

This policy applies to all trial court officials and employees who are involved in developing and implementing MOUs between the trial court and other government entities.

5.0 Definitions

The terms defined below apply to this policy and are for the express purpose of interpreting this policy.

1. **Assembly Bill 233 (AB 233).** The Lockyer-Isenberg Trial Court Funding Act of 1997, which shifted responsibility for funding the trial courts from the counties to the state (refer to Appendix A).
2. **Assembly Bill 1935 (AB 1935).** Follow up legislation to AB 233 that provides clarification and more detail to the original trial court funding legislation (refer to Appendix A).
3. **Contract.** An agreement between two parties to perform an action in return for some consideration (compensation). The contract defines the scope, schedule, consideration, and terms and conditions which the parties agree to abide by under the agreement.
4. **Interagency Agreement.** An agreement or transaction between two government entities, such as between a trial court and an agency of the Executive Branch.
5. **Memorandum of Understanding (MOU).** A written statement that outlines the terms of an agreement or transaction between two government entities, such as the trial court and the DMV or other such entity. Because of the historic relationship between the trial court and the counties, MOUs are commonly used as the form of agreement between the trial court and the county for services, such as security services.

Trial Court Financial Policies and Procedures	Memorandums of Understanding	Procedure No. FIN 7.02 Page: 4 of 19
--	-------------------------------------	--

6. **Negotiate.** To communicate with another party to arrive at an agreement.
7. **Rule 810.** California Rule of Court that defines the division of responsibility between the state and county for funding the trial courts. Rule 810 includes a listing of the types of costs that the county is allowed to charge the court as well as a list of unallowable costs.

6.0 Text

1. An MOU is a written statement that outlines the terms of an agreement or transaction. It contains the basic elements of a contract and discloses the parties, the nature and substance of the agreement, and the consideration. An MOU must be signed by the parties to the agreement.
2. MOUs are often used to document agreements between government entities either as a precursor to a contract or as a contract itself. Because of the historical relationship between the trial court and counties, MOUs are commonly used to establish agreements between the two.

6.1 MOU Elements

1. Every MOU must contain at least the four major elements of a contract, **cost, schedule, scope of work, and terms and conditions**. Each major element must be clearly defined in every MOU so that: 1) the court's needs are met, and 2) MOU parties clearly understand their obligations.
2. **Cost.** The cost that the trial court will pay for services under an MOU must be clearly stated. The cost may be expressed as a lump sum (one-time payment), firm fixed price, unit price, labor rate, basis for allocating costs, or other specific cost basis. If the court is contracting for labor, a schedule listing the hourly, daily, weekly, or

monthly cost for each person or job classification must be incorporated into the MOU. This includes lump sum and firm fixed price agreements where the schedule may be used as the basis for establishing the cost of additional work authorized under the contract. If costs are allocated to the court based on a specific methodology, the supporting documentation for the allocation basis, as well as the total costs being allocated must be provided.

3. **Schedule.** Time is usually a critical element in every agreement. The schedule of when work shall be started and completed must be included in the MOU. When applicable, interim dates for the completion of specific portions of the MOU should also be stated. Also, ensure that the term of the MOU is clearly stated.
4. **Scope of Work.** The MOU must specifically describe the services to be performed or other contract obligations. Any inclusions or exclusions should be listed. Details such as supervision, labor, equipment or materials that are to be supplied by either party should also be specified. Additional descriptive information may be attached to the MOU as an exhibit to help define the scope of work.
5. **Terms and Conditions.** MOU terms and conditions can be somewhat flexible to suit the needs of the court and the specific circumstances of the agreement. It is the responsibility of authorized trial court employees to assure that terms and conditions are appropriate to the MOU that is being negotiated. Additional language may be necessary to incorporate “special” conditions and protect the court’s interests. Examples of terms and conditions that may be included are:
 - a. Contract schedule, specifications, quantities.
 - b. Delivery or completion dates.
 - c. Contract type (lump sum, firm fixed price, cost plus fixed fee, time and materials, etc.).
 - d. Payment terms and frequency.

- e. Withholding of payments (retention).
- f. Warranty.
- g. Allowable vs. unallowable costs (profit or markups on materials and subcontracts).
- h. Audit rights.
- i. Remedies.
- j. Inspection requirements.
- k. Labor documentation (timesheets).
- l. Cost documentation.
- m. Financial requirements.
- n. Insurance requirements.
- o. Indemnification.
- p. Termination clauses.
- q. Contract changes clauses.
- r. Time is of the essence statement.
- s. Dispute resolution.
- t. Options.
- u. Escalation or increases in rates.

6.2 MOU Negotiation

1. Only court employees who are authorized to commit the court with respect to the subject matter and financial obligations of an MOU shall conduct the negotiation of the prospective agreement.
2. Prior to beginning negotiations, the trial court shall develop a negotiation strategy that addresses the critical points of the MOU.
3. At the conclusion of negotiations, a memorandum shall be prepared summarizing the results of the negotiations and the final agreements

on cost, scope of work, schedule, and terms and conditions. The memorandum will serve as the record of negotiations for the MOU file.

6.3 Risk Evaluation

1. The trial court shall conduct its business in a way that minimizes financial risk and avoids unnecessary liability.
2. There may be instances when prospective MOU parties insist on contract terms, payment schedules, work schedules, restrictive scopes of work or other conditions that are unacceptable to the court. After examination of all the issues, the trial court may elect to terminate negotiation of the MOU or limit the scope of the MOU to the specific areas in which the other party's conditions are acceptable and beneficial to the court.
3. Prior to execution, an authorized and knowledgeable employee shall review each MOU for conformance with the court's requirements and any negotiations that have occurred. The scope, schedule, cost, terms and conditions, and items that may affect the liability exposure or insurance must be reviewed and approved before the MOU is executed.

6.4 MOU Execution

1. Only employees who are specifically authorized to commit the trial court with respect to the subject matter and dollar value of the agreement shall execute MOUs.
2. Services covered under the scope of work of an MOU shall not be provided until the MOU has been fully executed (signed by both parties).
3. The trial court's files shall contain an **original, fully executed copy of every MOU** it enters into.

4. MOU files shall be retained according to the requirements established for contracts in Procedure 12.01, Record Retention.

6.5 MOUs for County-Provided Services

6.5.1 Requirements

1. GC 77212 requires the trial court to enter into a contract with the county to define the services the court desires to receive from the county and the services the county agrees to provide to the court. An MOU may serve as the contract between the county and trial court.
2. The requirement for a contract between the trial court and the county became effective with the beginning of fiscal year 1999 – 2000 and continues thereafter [GC 77212 (d)(2)].
3. The trial court’s MOU with the county must *“identify the scope of service, method of service delivery, term of agreement, anticipated service outcomes, and the cost of the service”* [GC 77212 (d)(1)]. AB 1935 also states that county services *“shall be provided to the court at a rate that shall not exceed the costs of providing similar services to county departments or special districts.”*
4. Services provided to the court may be discontinued by either party giving written notice to the other no later than 90 days before the end of the fiscal year (i.e., prior to April 1). Service discontinuation only becomes effective at the beginning of the new fiscal year (July 1) [GC 77212 (b) and (c)].
5. Under California Rule of Court 6.705, if the trial court receives or issues a notice regarding the discontinuation of county-provided services under GC 77212, a copy of the notice must be provided to the AOC Manager of Fiscal Services within 10 days of the notice issue or receipt date.

6.5.2 Key Elements of MOUs for County-Provided Services

1. At a minimum, all MOUs must include the basic contract elements and must meet the requirements provided by GC 77212. In addition, the trial court should also consider the following important issues in negotiating MOUs with the county:
 - a. **Rule 810 of the California Rules of Court** – This rule defines the division of responsibility between the state and county for funding the trial court. In negotiating MOU agreements and reviewing and approving payments to the county, the court should review the Rule 810 list of allowable and unallowable costs with respect to items that the county may charge the court. The table at the end of this section lists the types of costs that are allowable and unallowable under Rule 810.
2. **Trial Court Audit Rights** – Under GC 77212 (a), the county must provide agreed upon services to the court at rates that do not exceed those charged to county departments or special districts for similar services. The trial court should verify that:
 - a. Charges for direct and indirect services are appropriately based on the cost computation method known as the Office of Management and Budget (OMB) A-87 Cost Allocation Plan. The Cost Allocation Plan details the actual expenditures of departments that provide indirect services to county departments, and identifies the specific cost allocation methods that are used to distribute those costs. The trial court should be permitted to review the specific charges in the Cost Allocation Plan including the data elements provided by each county department that were used to complete the plan.
 - b. For MOUs entered into after January 1, 2002, GC 77212 (d) provides that the amount of any indirect or overhead costs shall be individually stated together with the method of calculation of the indirect or overhead costs. This amount shall not contain items that are not otherwise allowable court operations. The

Judicial Council may audit the county figures to ensure compliance with this requirement and determine the reasonableness of the indirect or overhead costs charged to the trial court.

3. **County loans to cover temporary cash flow shortages** – On occasion, the trial court may experience cash flow shortages. The trial court may arrange with the county for short-term loans to cover temporary cash flow needs so that it may meet its financial obligations in a timely manner.
4. The trial court may seek a loan from the county or another financial institution only after receiving prior approval from the Judicial Council and State Department of Finance. The Judicial Council will adopt procedures and criteria concerning loans and may delegate the authority for loan approval to the Administrative Director of the Courts.

6.5.3 Comprehensive vs. Separate Agreements

MOU agreements for county services entered into by the trial court may be either comprehensive or limited in scope. The trial court may elect to enter into one comprehensive agreement that covers all the services it will receive from the county. Alternatively, the court may decide to enter into separate agreements with the county, with each agreement addressing a specific service or group of related services.

7.0 Associated Documents

Summary of Rule 810 Allowable and Unallowable Costs

Trial Court Financial Policies and Procedures	Memorandums of Understanding	Procedure No. FIN 7.02 Page: 11 of 19
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Summary of Rule 810 Allowable and Unallowable Costs¹

Allowable Costs	Unallowable Costs
Judicial Officers (Function 1)	
<ol style="list-style-type: none"> Salaries and state benefits of Judges Full- or part-time court commissioners Full- or part-time court referees Assigned judges' in-county travel expense 	<ol style="list-style-type: none"> County benefits of judicial officers (Function 10) Juvenile traffic hearing officers (Function 10) Mental health hearing officers (Function 10) Pro tem hearing officers (Function 10) Commissioner and referee positions specifically excluded by statute from state trial court funding (unallowable) Related data processing (Function 9) Any other related services, supplies, and equipment (Function 10)
Jury Services (Function 2)	
<ol style="list-style-type: none"> Juror expenses of per diem fees and mileage Meals and lodging for sequestered jurors Salaries, wages, and benefits of jury commissioner and jury services staff (including selection of grand jury) Contractual jury services Jury-related office expenses (other than information technology) Jury-related communications, including "on call" services 	<ol style="list-style-type: none"> Juror parking Civil and criminal grand jury costs Jury-related information systems (Function 9)

¹ Source: Administrative Office of the Courts website (www.courtinfo.ca.gov/rules/2002/titletwo/801-892-04.htm#P92_5925).

Summary of Rule 810 Allowable and Unallowable Costs (continued)

Allowable Costs	Unallowable Costs
Verbatim Reporting (Function 3)	
<ol style="list-style-type: none"> 1. Salaries, wages, and benefits of court reporters who are court employees 2. Salaries, wages, and benefits of electronic monitors and support staff 3. Salaries, wages, and benefits of verbatim reporting coordinators and clerical support staff 4. Contractual court reporters and monitors 5. Transcripts for use by appellate or trial courts, or as otherwise required by law 6. Related office expenses and equipment (purchased, leased, or rented) used to record court proceedings, except as specified in Government Code §68073, e.g., notepaper, pens, and pencils ER equipment and supplies 	<ol style="list-style-type: none"> 1. Office expenses and equipment for use by reporters to prepare transcripts (unallowable) 2. Expenses specified in Government Code §68073 3. Space use charges for court reporters
Interpreter Services (Function 4)	
<ol style="list-style-type: none"> 1. Salaries, wages, and benefits of courtroom interpreters and interpreter coordinators 2. Per diem and contractual courtroom interpreters, including contractual transportation and travel allowances 	<ol style="list-style-type: none"> 1. Related data processing (Function 9) 2. Any other related services, supplies, and equipment (Function 10)

Summary of Rule 810 Allowable and Unallowable Costs (continued)

Allowable Costs	Unallowable Costs
Collections Enhancement (Function 5)	
<ol style="list-style-type: none"> 1. Salaries, wages, and benefits of collection employees of the court (e.g., financial hearing officers, evaluation officers collection staff) 2. Contract collections costs 3. County charges for collection services provided to the court by county agencies 4. Related services, supplies, and equipment (except data processing, Function 9) 	<ol style="list-style-type: none"> 1. Staff whose principal involvement is in collecting "forthwith" payments (e.g., counter clerks, cashiers, Function 10)
Dispute Resolution Programs (Function 6)	
<ol style="list-style-type: none"> 1. Arbitrators' fees in mandatory judicial arbitration programs 2. Salaries, wages, and benefits of court staff providing child custody and visitation mediation and related investigation services, e.g., Director of Family Court Services mediators, conciliators, investigators, clerical support staff 3. Contract mediators providing child custody and visitation mediation services 4. Salaries, wages, benefits, fees, and contract costs for other arbitration and mediation programs (programs not mandated by statute), such as arbitration administrators, clerical support staff, arbitrators' fees and expenses 	<ol style="list-style-type: none"> 1. Related data processing (Function 9) 2. Any other related services, supplies, and equipment (Function 10)

Trial Court Financial Policies and Procedures	Memorandums of Understanding	Procedure No. FIN 7.02 Page: 14 of 19
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Summary of Rule 810 Allowable and Unallowable Costs (continued)

Allowable Costs	Unallowable Costs
Court-Appointed Counsel - Noncriminal (Function 7)	
1. Expenses for court-appointed counsel as specified in Government Code §77003	
Court Security (Function 8)	
<p>As of January 1, 2003, Function 8 has been replaced by the Superior Court Law Enforcement Act of 2002, Government Code 69920 - 69927. See Procedure FIN 7.04, Court Security, for more information regarding allowable and unallowable costs and other court security requirements.</p>	

Summary of Rule 810 Allowable and Unallowable Costs (continued)

Allowable Costs	Unallowable Costs
Information Technology (Function 9)	
<ol style="list-style-type: none"> Salaries, wages, and benefits of court employees who plan, implement, and maintain court data processing and information technologies, e.g., programmers analysts Contract and consulting services associated with court information/data processing needs and systems County Information Systems/Data Processing Department charges made to court for court systems, e.g., jury-related systems court and case management, including courts' share of a criminal justice information system accounts receivable/collections systems Related services, supplies, and equipment, e.g., software purchases and leases maintenance of automation equipment training associated with data processing systems' development 	<ol style="list-style-type: none"> Information technology services not provided directly to the courts (i.e., services used by other budget units) Data processing for county general services, e.g., payroll, accounts payable (Function 11)
All Other Court Operations (Function 10)	
<ol style="list-style-type: none"> Salaries, wages, and benefits (including any pay differentials and overtime) of court staff <ol style="list-style-type: none"> Not reported in Functions 2-9 above, or Whose time cannot be allocated to Functions 2-9 in increments of at least 25 percent time (.25 FTE) Judicial benefits, county-paid 	<ol style="list-style-type: none"> Any of the staff listed in column 1 not employed by the court Service and supply costs not reported include: <ol style="list-style-type: none"> Civic association dues Facility damages insurance County central service department charges not appropriated in the court budget

Trial Court Financial Policies and Procedures	Memorandums of Understanding	Procedure No. FIN 7.02 Page: 16 of 19
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Summary of Rule 810 Allowable and Unallowable Costs (continued)

Allowable Costs	Unallowable Costs
All Other Court Operations (continued)	
<p>3. Allowable costs not reported in Functions 2-9 above</p> <p>4. (Nonjudicial staff) Cost items may include, for example, juvenile traffic hearing officer, mental health hearing officer, court-appointed hearing officer (pro tem), executive officer, court administrator, clerk of the court, administrative assistant, personnel staff, legal research personnel; staff attorney; planning and research staff, secretary, courtroom clerk, clerical support staff, calendar clerk, deputy clerk, accountant, cashier, counter clerk, microfilming staff, management analyst, probate conservatorship and guardianship investigators, probate examiner, training staff employed by the court</p> <p>5. Cost items may include, for example, office supplies, printing, postage, communications, publications and legal notices by the court, miscellaneous departmental expenses, books, publications, training fees, and materials for court personnel (judicial and nonjudicial), travel and transportation (judicial and nonjudicial), professional dues, memberships and subscriptions, statutory multidistrict judges' association expenses, research, planning, and program coordination expenses, small claims advisor program costs, court-appointed expert witness fees (for the court's needs), court-ordered forensic evaluations and other professional services (for the court's own use), pro tem judge's expenses, micrographics</p>	

Summary of Rule 810 Allowable and Unallowable Costs (continued)

Allowable Costs	Unallowable Costs
All Other Court Operations (continued)	
<p>expenses, public information services, vehicle use, including automobile insurance, equipment (leased, rented, or purchased) and furnishings, including interior painting, replacement/ maintenance of flooring, and furniture repair, maintenance of office equipment, janitorial services, legal services for allowable court operations (County Counsel and contractual), fidelity and faithful performance insurance (bonding and personal liability insurance on judges and court employees), insurance on cash money and securities (hold-up and burglary), general liability/comprehensive insurance for other than faulty maintenance or design of facility (e.g., "slip and fall", other injury, theft and damage of court equipment, slander, discrimination), risk management services related to allowable insurance, space rental for court records, county records retention/destruction services, county messenger/mail service, court audits mandated under Government Code 7183</p>	
County General Services - "Indirect Costs" (Function 11)	
<p>1. Cost items within the meaning of Rule 810(a)(7) and the county departments often performing the service may include, for example:</p> <p>County Administrator: Budget development and administration, interdepartmental budget unit administration and operations, personnel (labor) relations and administration</p>	<p>1. Unallowable court-related costs are those:</p> <ul style="list-style-type: none"> a. In support of county operations b. Expressly prohibited by statute c. Facility-related

Trial Court Financial Policies and Procedures	Memorandums of Understanding	Procedure No. FIN 7.02 Page: 18 of 19
---	-------------------------------------	---

Summary of Rule 810 Allowable and Unallowable Costs (continued)

Allowable Costs	Unallowable Costs
County General Services - "Indirect Costs" (continued)	
<p>Auditor-Controller: Payroll, financial audits, warrant processing, fixed asset accounting, departmental accounting for courts (e.g., fines, fees, forfeitures, restitutions, penalties, and assessments); accounting for the Trial Court Special Revenue Fund, accounts payable, grant accounting, management reporting, banking</p> <p>Personnel: Recruitment and examination of applicants, maintenance and certification of eligible lists, position classification, salary surveys, leave accounting, employment physicals, handling of appeals</p> <p>Treasurer/Tax Collector: Warrant processing, bank reconciliation, retirement system administration, receiving, safeguarding, investing, and disbursing court funds</p> <p>Purchasing Agent: Process departmental requisitions, issue and analyze bids, make contracts and agreements for the purchase or rental of personal property, store surplus property and facilitate public auctions</p>	<p>d. Exceptions of the nature referenced in Functions 1-11</p> <p>2. Unallowable cost items, including any related data processing costs, are not reported in Functions 1-11 and may include, for example:</p> <p>Communications: Central communication control and maintenance for county emergency and general government radio equipment)</p> <p>Central Collections: Processing accounts receivable for county departments (not courts)</p> <p>County Administrator: Legislative analysis and activities, preparation and operation of general directives and operating procedures responses to questions from the Board, outside agencies, and the public</p> <p>Executive Functions: Board of Supervisors, county advisory councils</p> <p>Treasurer/Tax Collector: Property tax determination, collection, etc.</p> <p>General Services: Rental and utilities support, coordinate county's emergency services</p>

Trial Court Financial Policies and Procedures	Memorandums of Understanding	Procedure No. FIN 7.02 Page: 19 of 19
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Summary of Rule 810 Allowable and Unallowable Costs (continued)

Allowable Costs	Unallowable Costs
County General Services "Indirect Costs" (continued)	
	<p>Property Management: Negotiations for the acquisition, sale, or lease of property, except for space rented for storage of court records, making appraisals negotiating utility relocations assisting County Counsel in condemnation actions, preparing deeds, leases, licenses, easements, collecting rents, building lease management services (except for storage of court records)</p> <p>Facility-Related: Construction services, right-of-way and easement services, purchase of land and buildings, construction, depreciation of buildings/use allowance, space rental/building rent (except for storage of court records), building maintenance and repairs (except interior painting and to replace/repair flooring), purchase, installation, and maintenance of H/V/A/C equipment, maintenance and repair of utilities, utility use charges (e.g., heat, light, water), elevator purchase and maintenance, alterations/ remodeling, landscaping and grounds maintenance services, exterior lighting and security, insurance on building damages (e.g., fire, juror parking earthquake, flood, boiler and machinery), grounds' liability insurance, parking lot or facility maintenance, juror parking</p>